

K&L|GATES

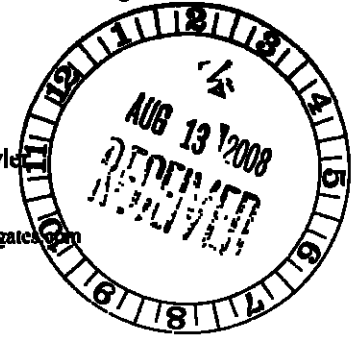
223 266  
K&L Gates LLP  
1601 K Street NW  
Washington, DC 20006-1600

T 202 778 9000

www.klgates.com

August 13, 2008

Brendon P. Fowler  
D 202 778 9237  
F 202 778 9100  
brendon.fowler@klgates.com



**Hand Delivery**

Ms Anne Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D C. 20024

ENTERED  
Office of Proceedings

AUG 13 2008

Part of  
Public Record

**Re: Transit America, LLC - Abandonment Exemption in Buchanan  
County, Missouri, STB Docket No. AB-1019X**

Dear Ms Quinlan:

Enclosed for filing in the above-referenced matter are the original and ten (10) copies of Transit America, LLC's Petition for Exemption pursuant to 49 U.S.C. § 10502 to abandon the above-referenced rail line. A Certificate of Service and of Publication pursuant to 49 C.F.R. §§ 1152.60(d) and 1105.12 is attached to the Petition. A diskette containing the draft Federal Register notice pursuant to § 1152.60(c) and a check for the \$5,400 filing fee are also enclosed.

Please time and date stamp the additional copy of this letter and the Petition, and return them with our courier. Thank you for your assistance. Please do not hesitate to contact me if you have any questions.

Sincerely,

Brendon P. Fowler  
Counsel for Transit America, LLC

**FEE RECEIVED**

AUG 13 2008

**SURFACE  
TRANSPORTATION BOARD**

Enclosures

**FILED**

AUG 13 2008

**SURFACE  
TRANSPORTATION BOARD**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

STB DOCKET NO AB-1019X

TRANSIT AMERICA, LLC  
– ABANDONMENT EXEMPTION –  
IN BUCHANAN COUNTY, MISSOURI



PETITION FOR EXEMPTION

ENTERED  
Office of Proceedings  
AUG 13 2008  
Part of  
Public Record

**FILED**  
AUG 13 2008  
SURFACE  
TRANSPORTATION BOARD

Brendon P Fowler  
K&L Gates, LLP  
1601 K Street, NW  
Washington, DC 20006  
(202) 778-9000

ATTORNEY FOR TRANSIT  
AMERICA LLC

Dated. August 13, 2008

**FEE RECEIVED**

AUG 13 2008

SURFACE  
TRANSPORTATION BOARD

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB DOCKET NO. AB-1019X**

**TRANSIT AMERICA, LLC  
– ABANDONMENT EXEMPTION –  
IN BUCHANAN COUNTY, MISSOURI**

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**PETITION FOR EXEMPTION**

**I. Introduction**

Transit America, LLC ("TA" or "Applicant") files this Petition for Exemption from the prior approval requirements of 49 U.S.C. § 10903 in accordance with 49 U.S.C. § 10502. The requested exemption will permit TA to abandon approximately two (2) route miles of the Missouri Branch Line in Buchanan County, Missouri, between approximately milepost 200.4 east to approximately milepost 198.4 (the "Subject Line")

**II. Background to Proposed Transaction**

TA acquired the right, title, and interest from its affiliate Herzog Contracting Corp ("HCC") to a portion of the Missouri Branch Line between milepost 201.0 and milepost 198.4, and in 2001 obtained operating authority on that line of railroad from the Surface Transportation Board. See TransitAmerica, LLC – Operation Exemption – Line in Buchanan County, MO, STB Fin Docket No. 34253 (STB served Oct 17, 2002). Since acquiring operating authority, TA has provided the only train service operating on the Subject Line, and has used the line to provide common carrier service to HCC as its sole customer.

Upon obtaining Board abandonment authority, TA plans to keep in place the rail and other track materials from the Subject Line. TA intends to convey the trackage and right of way on the Subject Line to its affiliate HCC, which will use that trackage to provide non-common carrier switching service in order to continue and expand operations at its shop facilities. TA will continue to serve the HCC shop on the portion of the Subject Line that will not be abandoned.

### **III. Petitioner's Representative**

The name, address, and telephone number of TA's representative are listed below:

Brendon P. Fowler  
K&L Gates, LLP  
1601 K Street NW  
Washington, D C. 20006-1600  
(202) 778-9000

### **IV. Line Description, Zip Code Information, and Map**

The Subject Line proposed for abandonment is located in Buchanan County, Missouri. It consists of approximately two (2) miles of trackage between approximately milepost 200.4 east to approximately milepost 198.4 in St. Joseph, Missouri, and traverses portions of U.S. Postal Service Zip Codes 64503 and 64507. The right-of-way is approximately 100 feet wide. The Subject Line does not contain any bridges or structures that are 50 years old or older. No stations or other shippers are located on the Subject Line. Based on the information Transit America has available to it, the Subject Line does not contain any federally granted rights-of-way. Any documentation in petitioner's possession will be made available promptly to those requesting it.

A map showing the Subject Line that TA proposes to abandon is attached hereto as **Appendix A**. Highways and other roads are also shown on the map

#### **V. Shipper Information**

The proposed abandonment will have no adverse effect on any TA customers. The only traffic that currently moves over the line relates to TA's affiliate, HCC. Following abandonment, TA intends to convey the trackage and right of way on the Subject Line to its affiliate HCC, which will use that trackage to provide non-common carrier switching service in order to continue and expand operations at its shop facilities. No other customers are located on or use the Subject Line, and no other freight service has been provided on the Subject Line for more than 15 years. TA will continue to serve the HCC shop on the portion of the Subject Line that will not be abandoned

The Subject Line is located in a rural area, with little or no likelihood of new rail-served customers relocating on the Subject Line.

#### **VI. The Exemption Standards Have Been Met**

TA files its Petition for Exemption under 49 U S C § 10502 for an exemption from the provisions of 49 U S C § 10903 49 U.S.C. § 10502 requires the Board to exempt a rail transaction, including abandonments, when it finds that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either the transaction is of limited scope, or Board regulation is not *necessary to protect shippers from an abuse of market power*

TA's proposed abandonment clearly satisfies these exemption standards. The transportation policy described in 49 U.S.C. § 10101 states that, in exercising its authority, the Board endeavors to minimize the need for Federal regulatory control over

the rail transportation system, render fair and expeditious regulatory decisions when regulation is required, foster sound economic conditions in transportation, reduce barriers to exit from the industry, encourage the honest and efficient management of railroads, and provide for the expeditious handling and resolution of all proceedings. 49 U S C § 10101(2), (5), (7), (9), & (15).

The requested exemption serves all of the above elements of the rail transportation policy. It will minimize TA's costs and expenses that otherwise would be associated with seeking the requested abandonment through a full application proceeding. The exemption will similarly expedite regulatory action and decisions, and reduce regulatory barriers to exit. It will also foster sound economic conditions and efficient management in the transportation industry by allowing TA to abandon a portion of line that is extremely unlikely to be used for future common carrier service.

Furthermore, the proposed abandonment is clearly a transaction of limited scope. The Subject Line is only approximately 2 miles long, and does not directly serve any shippers. No freight rail service other than to TA's nearby affiliate HCC has been provided over the Subject Line for more than 15 years. The Subject Line is located in a rural area, and it is extremely unlikely that future shippers would decide to relocate onto the line. Because there are no shippers located on the Subject Line, regulation of the proposed abandonment is not needed to protect them from an abuse of market power.

In short, no significant interests of shippers, competitors, or communities will be adversely affected by the proposed abandonment, which is narrow in scope and affects no existing shippers, and granting the exemption will foster and serve the purposes of the Board's transportation policy.

## **VII. Land Area and Public Use**

The right-of-way for the Subject Line is approximately 100 feet wide, and runs through a rural area east of St. Joseph, Buchanan County, Missouri. Topography is generally level

As previously indicated, upon abandonment TA will convey the trackage and right of way on the Subject Line to its affiliate HCC, which will use that trackage to provide non-common carrier local switching service in order to continue and expand operations at its shop facilities. TA will continue to directly serve the HCC shop on the portion of the Subject Line that will not be abandoned. Because TA plans to keep in place the rail and other track materials from the Subject Line, and perform no salvage operations, TA does not believe that the Subject Line will be suitable for trail purposes. In addition, the Subject Line does not appear suitable for other public purposes, including roads and highways, or other forms of mass transportation, as the Subject Line is near the city of St. Joseph, which is already served by numerous streets and highways including US-169 and I-29. The Subject Line also already parallels an existing roadway, Saxton Easton Road.

According to TA's information, the Subject Line does not contain any federally-granted right-of-way. A map showing the Subject Line is attached hereto as **Appendix A.**


## **VIII. Labor**

The interests of the railroad employees of TA who may be adversely affected by the proposed abandonment will be adequately protected by the labor protective conditions in *Oregon Short Line R. Co. – Abandonment – Goshen*, 360 I.C.C. 91 (1979).

**IX. Environmental and Historic Report**

The required environmental and historic information is contained in the combined Environmental and Historic Report ("EHR"), which was filed on July 17, 2008. A copy of the EHR transmittal letter is attached as **Appendix B**. On August 12, 2008, the Missouri Federal Assistance Clearinghouse submitted a letter to Petitioner indicating no reviewing agencies had comments or recommendations at this time. A copy of that letter is attached as **Appendix D**.

Respectfully submitted,



Brendon P. Fowler  
K&L Gates, LLP  
1601 K Street, NW  
Washington, DC 20006  
(202) 778-9000

**ATTORNEY FOR TRANSIT  
AMERICA LLC**

Dated August 13, 2008



## **VERIFIED STATEMENT OF ROBERT J. SMITH**

**My name is Robert J. Smith. I am a member of the Management Committee of Transit America LLC ("TA"). My office address is 1 Coaster Way, Camp Pendleton, CA 92055, and my mailing address is Post Office Box 2480, Oceanside, CA 92051. I was appointed to the Management Committee of TA and named President of Transit America Services Inc. in 2006. In my current position, I am responsible for general oversight of company operations and policies, and for reporting to shareholders.**

**The purpose of this statement is to describe the characteristics and disposition of the portion of line TA proposes to abandon in Buchanan County, Missouri (the "Subject Line"). The Subject Line consists of approximately two (2) miles of trackage between approximately milepost 200.4 east to approximately milepost 198.4 in St. Joseph, Missouri. The right-of-way is approximately 100 feet wide, and runs parallel to a local road, Saxton Easton Road. The Subject Line does not contain any bridges or structures that are 50 years old or older. No stations or other shippers are located on the Subject Line. Based on the information TA has available to it, the Subject Line does not contain any federally granted rights-of-way.**

**The line is located in a rural area east of St. Joseph, Missouri, and there are no reasonable prospects or likelihood that future shippers would try to relocate onto the line. The only freight traffic that has moved over the line in the last 15 years relates to the car repair shop of TA's affiliate, HCC. Upon abandonment, TA intends to convey the trackage and right of way on the Subject Line to its affiliate HCC, which will use that trackage to provide non-common carrier switching service in order to continue and**

expand operations at its shop facilities. Consequently, TA will not engage in any salvage operations with regard to the Subject Line following abandonment

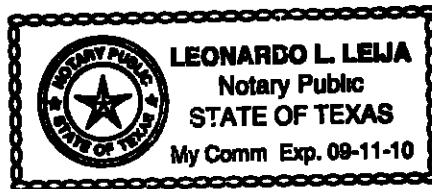
STATE OF TEXAS

)  
)  
)  
)  
)

ss.

COUNTY OF DALLAS

Robert J Smith, being duly sworn, deposes and states that he has read the above document, knows the facts asserted therein, and that the same are true as stated.



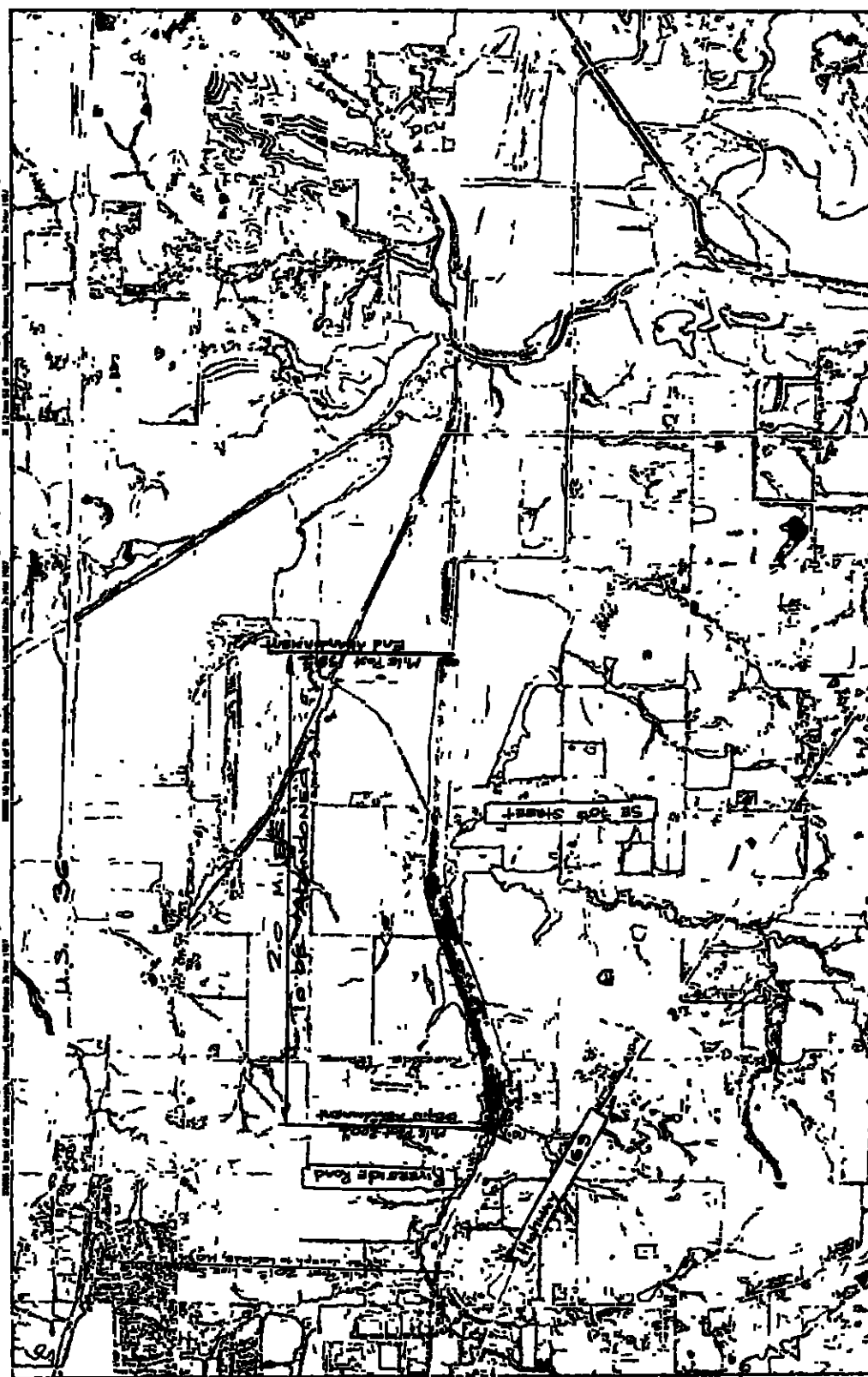
Robert J. Smith  
Robert J Smith

SUBSCRIBED and SWORN to before me this 11 day of August, 2008.

[Signature]  
Notary Public

**APPENDIX A**

**MAP OF THE SUBJECT LINE**



Images courtesy of the U.S. Geological Survey  
 Copyright © 2000 by the U.S. Geological Survey  
 All rights reserved. No part of this publication may be reproduced without permission in writing from the U.S. Geological Survey.

**Image courtesy of the U.S. Geological Survey**

**Image courtesy of the U.S. Geological Survey**  
**© 2004 National Geographic. Terms of Use. Delivery Statement**

**PN 1037**

Proposed to be Abandoned

## **APPENDIX B**

### **LETTER OF TRANSMITTAL OF COMBINED ENVIRONMENTAL AND HISTORIC REPORT**

July 17, 2008

Brendon P. Fowler

D 202 778 9237

F 202 778 9100

brendon.fowler@klgates.com



**Hand Delivery**

Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20024

**Attention: Victoria Rutson, Section of Environmental Analysis**

**Re: Transit America, LLC - Abandonment Exemption in Buchanan  
County, Missouri, STB Docket No. AB-1019X**

Dear Ms. Rutson:

Enclosed for filing in the above-referenced matter are the original and ten (10) copies of (1) Transit America, LLC's Combined Environmental and Historic Report prepared pursuant to 49 C.F.R. §§ 1105.7 and 1105.8, (2) the transmittal letter that accompanied the report pursuant to 49 C.F.R. § 1105.11; and (3) a Certificate of Compliance with 49 C.F.R. Part 1105.

Transit America anticipates filing a Petition for Exemption in this matter on or after August 6, 2008. Please do not hesitate to contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brendon P. Fowler'.

Brendon P. Fowler  
Counsel for Transit America, LLC

Enclosures

**APPENDIX C**

**DRAFT FEDERAL REGISTER NOTICE**

**Pursuant to 49 C.F.R. § 1152.60(c)**

**[Please see attached]**



## **DRAFT FEDERAL REGISTER NOTICE**

### **STB No. AB-1019X**

#### **Notice of Petition for Exemption To Abandon or To Discontinue Service**

On August 13, 2008, Transit America LLC filed with the Surface Transportation Board, Washington, D.C. 20423, a petition for exemption for the abandonment of a portion of the line of railroad known as the Missouri Branch Line, extending from railroad milepost 200.4 east to approximately milepost 198.4, which traverses through portions of U.S. Postal Service Zip Codes 64503 and 64507, a distance of approximately two (2) miles, in Buchanan County, Missouri (the "Line"). There are no shippers on the Line that will be adversely affected by the proposed abandonment. The Line for which the abandonment exemption request was filed does not include any stations, and there are no structures that will be adversely affected by the proposed abandonment.

The Line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by as required by 49 U.S.C. § 10903(b)(2).

Any offer of financial assistance will be due no later than 10 days after service of a decision granting the petition for exemption.

All interested persons should be aware that following abandonment of rail service and salvage of the Line, the Line may be suitable for other public use, including interim trail use. Upon obtaining Board abandonment authority, TA plans to keep in place the rail and other track materials from the Line.

Any request for a public use condition and any request for trail use/rail banking will be due no later than 20 days after notice of the filing of the petition for exemption is published in the Federal Register.

Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment or discontinuance regulations at 49 CFR Part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

## **APPENDIX D**

### **ADDITIONAL CORRESPONDENCE RECEIVED FROM AGENCIES**



State of Missouri  
**OFFICE OF ADMINISTRATION**  
Post Office Box 809  
Jefferson City, MO  
65102  
(573) 751-1851

**Matt Blunt**  
Governor

**Larry W. Schepker**  
Commissioner

August 12, 2008

Brendon Fowler  
K&L Gates  
1601 K. Street NW  
Washington, DC 20006-1600  
brendon.fowler@klgates.com

Dear Mr. Fowler

Subject                      0902014  
                                 Assistance

The Missouri Federal Assistance Clearinghouse, in cooperation with state and local agencies interested or possibly affected, has completed the review on the above project application.

None of the agencies involved in the review had comments or recommendations to offer at this time. This concludes the Clearinghouse's review.

A copy of this letter is to be attached to the application as evidence of compliance with the State Clearinghouse requirements.

Please be advised that I am the contact for the Federal Funding Clearinghouse. You can send future requests to the following address: Sara VanderFeltz, Federal Funding Clearinghouse, 201 West Capitol, Room 125, and Jefferson City, Missouri 65101.

Sincerely,

A handwritten signature in black ink that reads "Sara VanderFeltz".

Sara VanderFeltz  
Administrative Assistant

cc

JUL 28 2008

0002014  
K&L Gates LLP1601 K Street NW  
Washington, DC 20006-1600

T 202 778 9000

www.klgates.com

July 17, 2008

Brendon P Fowler  
D 202 778 9237  
F 202 778 9100  
brendon.fowler@klgates.com**Via First Class Mail****TO: ALL PARTIES ON ATTACHED SERVICE LIST****Re: Transit America, LLC - Abandonment Exemption in Buchanan County,  
Missouri, STB Docket No. AB-1019X**

Dear Sir or Madam:

On or after August 6, 2008, we are filing with the Surface Transportation Board a Petition seeking authority to exempt Transit America, LLC ("TA") from prior Board approval under 49 U.S.C. § 10903 for the abandonment of an approximately 2 mile portion of its line of railroad located between approximately milepost 200.4 and approximately milepost 198.4 in St. Joseph, Buchanan County, Missouri (the "Subject Line"). Attached is an Environmental Report and Historic Report describing the proposed action and any expected environmental and/or historic effects, as well as a map of the affected area.

We are providing this report so that you may review the information that will form the basis for the STB's independent environmental analysis of this proceeding. If any of the information is misleading or incorrect, if you believe that pertinent information is missing, or if you have any questions about the Board's environmental review process, please contact the Section of Environmental Analysis (SEA), Surface Transportation Board, 395 E Street, SW, Washington, D.C., 20423, telephone 202-245-0245, and refer to the above Docket No. Because the applicable statutes and regulations impose stringent deadlines for processing this action, your written comments with SEA (with a copy to our below-signed representative) would be appreciated within 3 weeks.

Your comments will be considered by the Board in evaluating the environmental and/or historic preservation impacts of the contemplated action. If there are any questions concerning this proposal, please contact our representative directly. Our representative in this matter is Brendon P. Fowler who may be contacted by telephone at (202) 778-9237 or by mail at K&L Gates, 1601 K Street N.W., Washington, D.C. 20006-1600.

## APPENDIX E

### CERTIFICATE OF SERVICE AND PUBLICATION

I hereby certify that on August 13, 2008, the foregoing Petition for Exemption in Docket No AB-1019X and an appropriate transmittal letter were served by certified first class mail, postage prepaid, upon the following pursuant to 49 C.F.R. § 1152.60:

**MTMCTEA**

Attn. Railroads for National Defense  
720 Thimble Shoals Blvd, Suite 130  
Newport News, VA 23606-2574

U.S. Department of the Interior

**National Park Service**

Recreation Resources Assistance Division  
P O Box 37127  
Washington, D C 20013-7127

**U.S. Department of Agriculture**

Chief of the Forest Service  
4<sup>th</sup> Floor NW  
Auditors Building  
14<sup>th</sup> Street & Independence Ave, SW  
Washington, D.C. 20250

**Missouri Public Service Commission**


Governor Office Building  
200 Madison Street  
PO Box 360  
Jefferson City, MO 65102-0360

The Undersigned further certifies that a notice of abandonment was published one time in the County where the rail line is located, as follows

<u>County</u>	<u>Newspaper</u>	<u>Date</u>
Buchanan	St Joseph News-Press	July 30, 2008

The above newspaper is generally circulated in the county where the Subject Line is located. The Notice as published was in the form prescribed by the Board for a Petition for Exemption pursuant to 49 C F R § 1105.12.

Dated this 13th day of August, 2008

  
Brendon P Fowler